

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
for the Use and Benefit of HARRIS PACIFIC
NORTHWEST, LLC,

Plaintiff,

v.

TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA,
a Connecticut corporation,

Defendant.

And

WALSH CONSTRUCTION COMPANY, an
Illinois corporation,

Intervenor.

No. 3:21-cv-05285-BHS

JOINT STATUS REPORT,
STIPULATION, AND
ORDER RE STAY OF
PROCEEDINGS

COME NOW, Plaintiff Harris Pacific Northwest, LLC (“**Harris Pacific**”), Defendant Travelers Casualty and Surety Company of America (“**Travelers**”), and Intervenor Walsh Construction Company (individually “**Walsh**” and collectively, the “**Parties**”) through their counsel of record, to present the following status report and stipulation for a continued stay of proceedings and a continuance of any court deadlines related to the above-captioned action.

1 The Parties stipulate to the following facts:

2 1. A Complaint was filed by Harris Pacific in the above-captioned action.

3 2. The above-entitled action concerns a Miller Act Claim for subcontract work by
4 Harris Pacific for Walsh.

6 3. The subcontract work concerns a construction project where Walsh is acting as
7 the General Contractor and for which the Department of the Navy – Naval Facilities
8 Engineering Command Northwest (“NAVFAC”) is the Owner.

10 4. Walsh has submitted requests for equitable adjustment to NAVFAC, hereinafter
11 referred to as the “Owner claims.” The Owner claims include a claim from Harris Pacific that
12 was submitted to Walsh on or about April 15, 2022, and they include Walsh’s markup on those
13 claims.

15 5. Travelers is the surety for Walsh’s payment bond submitted pursuant to the
16 Miller Act.

17 6. Walsh submitted Harris Pacific’s claims to NAVFAC together with Walsh’s
18 own markup claim and claims of another subcontractor on the same project. Having previously
19 obtained some relief from the Government based on project delays and impacts attributable to
20 NAVFAC, Walsh supports Harris Pacific’s entitlement to equitable compensation from the
21 Government to the extent that the mechanical subcontractor sustained cost impacts from the
22 same issues. On September 30, 2022, NAVFAC informed Walsh that, due to the complexity
23 of the issues identified in the claim as well as audits to be performed, the Government could not
24 issue a final Contracting Officer’s decision before March 30, 2023. On March 31, 2023,
25 NAVFAC again advised Walsh that it would need additional review time to issue a Contracting
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1 Officer's Final Decision, stating that such a decision would be issued on or before October 31,
2 2023. Based on this representation, the parties agreed to stay this matter until mid-December
3 2023, and this Court subsequently granted that stay.
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5 7. NAVFAC finally issued its COFD on March 8, 2024.

6 8. On June 4, 2024, Walsh appealed the Contracting Officer's Final Decision to
7 the Armed Services Board of the Contract Appeals. This appeal includes Harris Pacific's claims,
8 as well as Walsh's claim and the claims of another subcontractor, Sessler, on the same project.
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10 9. The parties filed a Complaint with the Armed Services Board of Contract
11 Appeals. Walsh subsequently filed an amended Complaint, eliminating all of Walsh claims
12 except for mark-up on the subcontractors' claims.
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14 10. As outlined in the previous status reports, Walsh notes that Article 11 of its
15 subcontract with Harris Pacific (attached as Exhibit B to Harris Pacific's Complaint) requires
16 the subcontractor to stay and suspend any legal action against Walsh and Travelers until
17 Walsh's claims against NAVFAC have been adjudicated. Harris Pacific responds that such
18 language in the subcontract cannot support extension of the subcontractor's Miller Act rights
19 for an unreasonable period of time and is also conditioned upon Walsh diligently and
20 expeditiously pursuing a pass-through claim on behalf of Harris-Pacific. The Parties do not
21 believe that this issue needs to be decided by the Court at this point, however, because Walsh
22 is continuing to pursue an appeal, and Harris Pacific is therefore willing to accept another stay.
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25 11. The Parties further agree that by entering into this stipulation, neither Travelers,
26 Walsh, nor Harris Pacific is waiving or releasing its rights and defenses under the Miller Act or
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under Article 11 of the subcontract, including but not limited to Walsh's contractual right to demand arbitration of any remaining claims between Walsh and Harris Pacific.

12. By entering into this stipulation, the Parties are attempting to avoid unnecessary costs and fees and neither party waives any claims, counterclaims, affirmative defenses, or defenses, and all such rights are expressly reserved.

13. Based on the above facts, the Parties jointly move, stipulate, and agree to, entry of an order by the Court in the above-titled action:

- a. staying proceedings for an additional six (6) months;
- b. continuing any deadlines by six months;
- c. requiring the Parties to file with the Court, no later than six months from the entry of the order below, a joint a regarding the status of the Owner claims, and the Parties' positions as to any further extension of the stay and continuance.

DATED this 23rd day of January, 2025.

AHLERS CRESSMAN & SLEIGHT PLLC

SMITH, CURRIE & OLES LLP

By: /s/Masaki J. Yamada via email authorization

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Attorneys for Plaintiff

ORDER

Pursuant to the above stipulation, this action and all related deadlines are STAYED for a period of six months from the date of entry of this Order. No later than six months from the date of entry of this Order, the Parties shall file with the Court a report regarding the status of the Owner claims referred to in the stipulation of the Parties and the Parties' positions as to any further extension of the stay.

IT IS SO ORDERED this 27th day of January, 2025.



BENJAMIN H. SETTLE
United States District Judge

Presented by:

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CERTIFICATE OF SERVICE

I hereby certify that on the date listed below I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel of record:

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*Attorneys for Defendant Travelers Casualty and Surety Company of
America and Walsh Construction Company*

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED: This 23rd day of January, 2025, at Seattle, Washington.

/s/Christine J. Smith
Christine J. Smith, Legal Assistant